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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL DESIGN FOR THE SKINNER LANDFILL SITE
WEST CHESTER, OHIO

U.S. EPA DOCKET NO. _____

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for Remedial Design at the Skinner Landfill Site

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ATTACHMENT I.....LIST OF RESPONDENTS

ATTACHMENT II.....STATEMENT OF WORK ("SOW")

ATTACHMENT III.....RECORD OF DECISION

IN THE MATTER OF:

ADMINISTRATIVE ORDER BY CONSENT FOR REMEDIAL DESIGN

U.S. EPA DOCKET NO.

Proceeding under Sections 104
and 122 of the
Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended

The United States Environmental Protection Agency ("U.S. EPA") and the Respondents listed on Attachment I have agreed to the making and entry of this Administrative Order on Consent ("Consent Order") for the performance of Remedial Design Activities at the Skinner Landfill Superfund Site in West Chester, Ohio.

A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104 and 122 and of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), and delegated to the Administrator of the U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Federal Register 2926 (January 29, 1987), further delegated to

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the Regional Administrators by U.S. EPA Delegation No. 14-14-3 on September 13, 1987, and further delegated to the Director of the Waste Management Division by Region V Delegation No. 14-14-C on September 14, 1987. The authority has been re-delegated to the Associate Division Director of the Waste Management Division.

B. The Respondents to this Consent Order agree to undertake all actions required by the terms and conditions hereof and Respondents further consent to, and will not contest or legally challenge the validity of this Consent Order or its terms, or the U.S. EPA's authority or jurisdiction to issue or enforce this Consent Order.

C. Neither Respondents' consent nor anything in this Consent Order shall constitute an admission by Respondents of any legal or factual matter or opinions set forth herein, including but not limited to any findings or determinations.

D. By undertaking the Work hereunder, Respondents do not admit liability under CERCLA or any other applicable law, rule or regulation with regard to releases or threatened releases of hazardous substances at the Skinner Landfill.

E. This Consent Order shall be inadmissible, pursuant to Rules 407 or 408 of the Federal Rules of Evidence, in any action or proceeding for purposes of establishing liability or fault as to any Respondent. The Consent Order shall be admissible only in actions or proceedings in which the obligations of the parties under this Consent Order are at issue.

II. NOTICE OF ADMINISTRATIVE ACTION

A. U.S. EPA has provided notice of this administrative action to certain persons whom it presently considers to be potentially responsible parties ("PRPs") regarding the Skinner Landfill Superfund Site, including those parties to whom it issued a unilateral administrative order on December 9, 1992, as of the date of entry of this Consent Order.

B. U.S. EPA has notified the Ohio Environmental Protection Agency ("Ohio EPA") that U.S. EPA intends to issue this Consent Order. U.S. EPA will consult with the Ohio EPA and the Ohio EPA will have the opportunity to review and comment to U.S. EPA regarding all Work to be performed, including Remedial Design, reports, technical data, and other deliverables, and any other issues which arise while this Consent Order remains in effect.

C. The U.S. EPA has notified the Federal Natural Resource trustee of the negotiations in this administrative action pursuant to the requirements of Section 122(j) of CERCLA, 42 U.S.C. § 9622(j).

III. PARTIES BOUND

A. This Consent Order applies to and binds the following persons, as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21):

(1) The U.S. EPA, through the authority delegated to the Associate Division Director of the Waste Management Division, Region V;

(2) The persons listed as Respondents on Attachment I and their successors and assigns.

B. Each undersigned representative of the U.S. EPA and the Respondents certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Order, to execute this Consent Order on behalf of such party, and to legally bind such party to this Consent Order.

C. The Respondents shall be jointly and severally responsible for carrying out all actions required of the Respondents by the terms and conditions of this Consent Order.

D. No change in ownership, corporate structure, or partnership status shall in any way alter the status or responsibility of the Respondents under this Consent Order. The Respondents shall provide copies of this Consent Order to any and all subsequent owners or successors upon a substantial change of ownership or stock or assets.

E. The Respondents shall be responsible for requiring that all officers, directors, agents, employees, principals, contractors, consultants, firms, and other persons or entities acting under or on behalf of the Respondents with respect to all matters herein comply with the terms of this Consent Order. The Respondents shall provide copies of this Consent Order to all contractors, subcontractors, laboratories, consultants, firms, and other persons or entities retained to perform any Work under this Consent Order within fourteen (14) days of either the

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effective date of this Consent Order or the date of retaining their services, whichever date is later.

F. U.S. EPA shall be responsible for requiring that all agents or representatives of U.S. EPA, and contractors retained by U.S. EPA, shall comply with the terms of this Consent Order.

IV. STATEMENT OF PURPOSE

A. The mutual objectives of U.S. EPA and the Respondents in entering into this Consent Order are to produce a Remedial Design which ensures that the remedial action to be implemented in accordance with the Record of Decision of June 4, 1993 is protective of public health and welfare and the environment and to implement the Work as defined in this Consent Order and in the Statement of Work.

B. The activities conducted pursuant to this Consent Order are subject to approval by U.S. EPA, as provided herein, and shall be consistent with CERCLA, the National Contingency Plan ("NCP"), 40 CFR Part 300, and all other applicable laws. The

U.S. EPA agrees that the Work to be performed, if performed in compliance with this Consent Order, is necessary and consistent with the provisions of the NCP, and U.S. EPA will notify Respondents of that fact in writing upon completion of the Work.

V. U.S. EPA FINDINGS OF FACT

Based upon information available on the effective date of this Consent Order, the U.S. EPA, acting through the Associate Division Director of the Waste Management Division, Region V, makes the following findings:

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A. The Skinner Landfill Superfund Site is located in West Chester, Ohio, in Section 22 of Butler County.

B. Sand and gravel were mined at the Site. From 1934 through 1990, the Site was used to landfill a wide variety of materials including construction and demolition debris, household refuse, and a wide variety of chemical wastes. A low area in the center of the Site, referred to as the waste lagoon, was used for the disposal of paint wastes, ink wastes, creosote, pesticides, and other chemical wastes.

C. In 1976, in response to a Site fire and reports of a black, oily liquid in a waste lagoon on the Site, the Ohio EPA investigated the Site. After the initial investigation, the Skinners covered the waste lagoon with a layer of demolition debris, thereby hindering further investigation. Albert Skinner, the Site owner at the time, dissuaded the Ohio EPA from accessing the waste lagoon area by claiming that nerve gas, mustard gas, incendiary bombs, phosphorus, flame throwers, cyanide ash, and other explosive devices were buried at the landfill. This prompted the Ohio EPA to request the assistance of the U.S. Army. In the presence of Ohio EPA attorneys and U.S. Army investigators, Albert Skinner retracted his claims that ordnance and other explosive devices were present on the Site. The U.S. Army and Ohio EPA then dug several trenches into the buried waste lagoon, finding a black substance and barrels of wastes. Records searches performed by the U.S. Army have revealed no records

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indicating the shipment of ordnance or explosives from the U.S. Army to the Site.

D. In 1982, the U.S. EPA conducted a limited investigation for the purpose of scoring the Site for inclusion on the National Priorities List ("NPL"). This investigation detected volatile organic compounds on the Site in the groundwater southeast of the buried waste lagoon. Pursuant to Section 105 of CERCLA, U.S. EPA placed the Site on the NPL in September 1983 by publication in the Federal Register at 48 Fed. Reg. 40658.

E. In 1985, the U.S. EPA conducted a Phase I Remedial Investigation, which included the sampling of groundwater, surface water, and soils at the Site. U.S. EPA also conducted a biological survey of the East Fork of Mill Creek and Skinner Creek.

F. In 1989, the U.S. EPA performed a Phase II Remedial Investigation ("Phase II RI") to further investigate the Site groundwater, surface water, soils, and sediments. Overall, 33 soil borings were taken, 39 groundwater monitoring wells were installed, and over 400 samples from the Site were analyzed in chemical laboratories.

G. The groundwater analytical data developed during the Phase I RI and the Phase II RI revealed the presence of "hazardous substances" as defined in Section 101(14) of CERCLA.

H. In August 1990, the Ohio EPA closed the Site to all further landfilling activities.

I. In April 1992, U.S. EPA made the Proposed Plan for the remedial action to be conducted at the Site available for public comment. Public meetings were held in West Chester, Ohio, on May 20, 1992 and July 29, 1992. Based on comments received at these meetings, U.S. EPA proposed implementing the Interim Action Operable Unit and extended the comment period for such Operable Unit until August 31, 1992. The Record of Decision for this Interim Action Operable Unit was signed by the Regional Administrator for Region V of U.S. EPA on September 30, 1992. The required actions under that Record of Decision were fully performed by the Respondents pursuant to an administrative order issued after the Record of Decision as of September 29, 1993.

J. The Record of Decision for the second and final of the two operable units at the Site was signed by the regional Administrator on June 4, 1993 ("June 4, 1993 ROD"). The June 4, 1993 ROD is included as Attachment III and includes a discussion of U.S. EPA's reasons for the selection of the Second Operable Unit remedy. Ohio EPA concurred with the remedy selected in the June 4, 1993 ROD. The selected remedy addresses the second and final of two operable units for this Site. This final operable unit addresses potential future migration of Site contaminants into the groundwater and will limit the potential for direct exposure of Site contamination to humans.

VI. U.S. EPA DETERMINATIONS

Based upon information available on the effective date of this Consent Order, the U.S. EPA, acting through the Associate

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Division Director of the Waste Management Division, Region V, makes the following determinations:

A. The Skinner Landfill Superfund Site is a "Facility" within the meaning of Section 101(9) of CERCLA, and the "Site" for purposes of this Consent Order is identified in a map as part of Attachment II to this Consent Order;

B. Respondents are "persons" within the meaning of Section 101(21) of CERCLA;

C. "Hazardous substances," as defined in Section 101(14) of CERCLA, have been deposited, stored, disposed of, placed, or otherwise located at the Site.

D. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site constitutes a "release" or substantial threat of "release," as defined in Section 101(22) of CERCLA, into the environment of a hazardous substance from or at the Site;

E. Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in the June 4, 1993 ROD, may present an imminent and substantial endangerment to the public health, welfare, and the environment.

F. Unless otherwise defined herein, terms used in this Consent Order shall have the meaning defined in CERCLA, the NCP or applicable U.S. EPA guidance. "Days" shall mean calendar days, unless otherwise provided.

G. "Work" is defined as all tasks to be performed under Sections VII (Work to be Performed), X (Additional Work), and the Statement of Work attached to this Consent Order (see Attachment II).

H. The actions required by this Consent Order are in the public interest and are necessary and consistent with CERCLA and the NCP.

VII. WORK TO BE PERFORMED

A. All Work to be performed by the Respondents pursuant to this Consent Order shall be in accordance with the specifications and schedules contained in the Statement of Work.

B. Attachment II to this Consent Order provides a Statement of Work ("SOW") for preparing a Remedial Design at the Skinner Landfill Site, Butler County, West Chester, Ohio. The terms of the SOW, including all schedules therein, are incorporated into and made a part of this Consent Order.

C. Respondents shall perform the following Work:

1. Within seven (7) days after the effective date of this Consent Order, Respondents shall notify U.S. EPA in writing of the name, title, and qualifications of any contractor(s) proposed to be used in performing the Remedial Design under this Consent Order. U.S. EPA shall thereafter provide written notice of the name(s) of the contractor(s) it approves, if any. Respondents may select any approved contractor from that list and shall notify U.S. EPA of the name of the contractor selected within twenty-one (21) days

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of U.S. EPA's designation of approved contractors. If at any time Respondents propose to change the contractor, they shall notify U.S. EPA and shall obtain approval from U.S. EPA as provided in this Section, before the new contractor performs any Work under this Consent Order.

2. Within ninety (90) days of U.S. EPA's approval of the design contractor, the Respondents shall develop and submit to the U.S. EPA a Work Plan for a complete Remedial Design for the Site (hereinafter, "Remedial Design Work Plan" or "RD Work Plan"). The structure and contents of the RD Work Plan shall be in accordance with the SOW. The RD Work Plan shall be consistent with and shall provide for implementing the SOW, and shall comport with EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A). The Remedial Design Work Plan shall provide for the design of the remedy set forth in the June 4, 1993 ROD in accordance with the specifications and schedules set forth in the SOW.

3. Upon approval of the RD Work Plan by U.S. EPA, the Respondents shall implement the RD Work Plan and submit all design deliverables according to the schedule given in the SOW. Any violation of the approved RD Work Plan, including the schedules therein, shall be a violation of this Consent Order.

4. The Respondents shall provide monthly written progress reports to U.S. EPA by the fifth (5th) business day

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of each month following the date of commencement of the Work detailed in the Remedial Design Work Plan. At a minimum, these monthly written progress reports shall include the following:

- a. A description of Work completed during the past month and Work planned for the coming month pursuant to this Consent Order;
- b. Target and actual completion dates for each element of activity, including the project completion, an explanation of any deviation or anticipated deviation from the Remedial Design Work Plan schedule, and proposed method of mitigating such deviation;
- c. A description of the difficulties encountered during the reporting period and the actions taken to rectify the problems; and
- d. Changes in key personnel.

D. Nothing contained herein shall be construed to mean that the Respondents have consented to implement the Remedial Action Work which will be implemented following completion of the Remedial Design required by this Consent Order.

E. In performing the Work under this Consent Order, Respondents (including any other related entities, persons, contractors and consultants) are fully vested with protections accorded under 42 U.S.C. §§ 9607 (d) and 9619, as well as other protections of similar purpose and scope accorded under any other statute, regulation, or rule of law.

VIII. REVIEW OF SUBMISSIONS

A. U.S. EPA shall review the RD Work Plan and other documents required to be submitted for review and approval pursuant to this Consent Order. The U.S. EPA shall respond to

each submission in writing. As a result of its review of a submission, U.S. EPA may: (a) approve the submission; (b) approve the submission with minor modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating U.S. EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the Remedial Design.

B. In the event of approval or approval with minor modifications by U.S. EPA, the Respondents shall proceed to take any action required by the RD Work Plan or other submittal, as approved by U.S. EPA.

C. Upon receipt of a notice of disapproval, the Respondents shall, within thirty (30) days or such longer time as specified by U.S. EPA in its notice of disapproval, correct the deficiencies and resubmit the RD Work Plan or other submittal for approval. Notwithstanding the notice of disapproval, the Respondents shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the submission.

D. If any submission submitted after a notice of disapproval is not approved by U.S. EPA, the Respondents shall be considered to be in violation of this Consent Order.

IX. ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, disapprovals, and other correspondences to be submitted pursuant to this Consent Order shall be sent by certified mail, overnight courier or

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personal delivery to the following addresses, or to such other addresses or addressees as the Respondents, or the U.S. EPA may hereafter designate in writing:

A. Three copies (or such other number as the U.S. EPA RPM may designate) of all documents to be submitted to the U.S. EPA should be sent to:

Bruce Sypniewski, Remedial Project Manager
U.S. Environmental Protection Agency, Region V
Minnesota/Ohio Remedial Response Branch (HSRM-6J)
77 West Jackson Boulevard
Chicago, IL 60604

In addition, two copies of all documents to be submitted to the U.S. EPA should be sent to an oversight contractor identified by the U.S. EPA Remedial Design Work Project Manager RPM within fourteen (14) days after the effective date of this Consent Order.

B. All documents to be submitted to the U.S. EPA should also be sent to the Ohio EPA, at the following address:

Ohio Environmental Protection Agency
Southwest District Office
40 South Main St.
Dayton, Ohio 45402
attn: Kathy Lee Fox (2 copies)
Site Coordinator

Ohio Environmental Protection Agency
Division of Emergency and Remedial Response
1800 WaterMark Drive/P.O. Box 1049
Columbus, Ohio 43206-1049
attn: Jenifer Kwasniewski (1 copy)

C. Documents to be submitted to the Respondents should be sent to the attention of:

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Brent W. Schindler, Chairperson
Skinner Landfill PRP Group
2030 Dow Center
Midland, MI 48674-2030

X. ADDITIONAL WORK

A. In the event that U.S. EPA, after consultation with the Respondents, determines that additional Remedial Design Work, including investigatory work related to design and/or engineering evaluation, is necessary to accomplish the objectives of this Consent Order and is not inconsistent with the National Contingency Plan, such determination shall be submitted by U.S. EPA to the Respondents in writing at any time that such additional Work is authorized under CERCLA. If, within thirty (30) days, Respondents decline to commence performance of such additional Work, U.S. EPA reserves the right to undertake such additional Work and to seek reimbursement of the cost incurred. U.S. EPA's decision to perform such additional Work is subject to Section XVIII (Dispute Resolution).

B. Any additional Work determined to be necessary by the Respondents shall be subject to the written approval by U.S. EPA.

C. Any additional Work shall be completed by the Respondents in accordance with the standards and specifications determined or approved in writing by U.S. EPA. Respondents shall propose and submit a schedule for the additional Work to U.S. EPA for approval. U.S. EPA, after consulting with the Respondents, may modify or determine a schedule for the additional Work. The additional Work shall be consistent with the purpose and

objectives of this Consent Order and the National Contingency Plan.

D. The decision of Respondents not to perform additional Work under this Consent Order shall not be deemed a violation of this Consent Order, although the standards established in Section XVI (Timeliness of Performance) do apply to any additional Work that the Respondents do undertake.

XI. COMPLIANCE WITH APPLICABLE LAWS

All Work undertaken by the Respondents pursuant to this Consent Order shall be performed in compliance with CERCLA and the National Contingency Plan, and all applicable Federal, State, and local laws, ordinances, and regulations, including all Occupational Health and Safety Administration and Department of Transportation regulations. The Respondents shall be responsible for obtaining all necessary State of Ohio and/or local permits which are necessary for the performance of any off-site Work hereunder. The standards and provisions of Section XVI describing Timeliness of Performance shall govern delays in obtaining permits required for the Work and also the denial of any such permits, provided that Respondents have made timely application for any such permits and have submitted all information required therefore. All Work not affected by the permitting delay shall proceed according to the approved schedule.

XII. ACCESS

A. The Respondents shall use their best efforts to obtain access agreements from all parties owning or leasing property to which Respondents may need access in order to implement the Remedial Design Work Plan within thirty (30) days of approval thereof by U.S. EPA. The Respondents' best efforts shall include, when necessary, the proffer of reasonable compensation to all such parties, other than the present owners of the Site, and any tenants, lessees, invitees, relatives or agents of the present owners of the Site. In the event that such access agreements are not obtained within the time referenced above, the Respondents shall so notify U.S. EPA in writing. Failure to obtain access shall not be deemed to be a violation of this Consent Order. The United States may, as it deems appropriate through the use of administrative or judicial authorities, assist Respondents in obtaining access to the Site. U.S. EPA reserves the right to terminate this Consent Order, perform a complete or partial Remedial Design, and seek reimbursement from the Respondents should the Respondents' inability to gain access to the Site or other areas materially affect the Respondents' ability to perform all of the Work required herein.

B. Authorized representatives of U.S. EPA and Ohio EPA shall be allowed access at reasonable times to the Site, and to other areas where Work is to be performed hereunder, by the Respondents, for purposes including, but not limited to: inspecting records, operating logs and contracts related to the

Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests, inspections, and sampling as U.S. EPA may deem necessary; using a camera, sound or video recording, or other documentary type equipment; and verifying the data submitted to the U.S. EPA by the Respondents pursuant to this Consent Order. At reasonable times, the Respondents shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Consent Order, subject to Section XIV (Sampling and Data/Document Availability) regarding confidentiality. All persons with access to the Site pursuant to this Consent Order shall comply with the revised Health and Safety Plan prepared by the Respondents.

C. Nothing herein shall be construed as restricting the inspection or access authority of the U.S. EPA or the Ohio EPA under any applicable law, permit or regulation.

XIII. PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, the Respondents shall designate a Project Coordinator ("PC") who shall have the primary responsibility for preparing the Remedial Design Work Plan. The U.S. EPA shall designate a Remedial Project Manager ("RPM") responsible for overseeing the implementation of the Work. The RPM shall serve as the designated representatives at the Site for U.S. EPA. To the maximum extent possible, communications between the Respondents

and the U.S. EPA, and all documents, reports, approvals and other correspondences concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the PC and RPM.

B. The U.S. EPA and the Respondents shall have the right to change their respective RPM or PC. Such a change shall be accomplished by notifying the other addressees (see Section IX) in writing. To the extent possible, such notification shall occur at least ten (10) days prior to the change.

C. The RPM shall have all authorities vested in an On-Scene Coordinator and a Remedial Project Manager by the National Contingency plan. The RPM shall have the authority to halt, conduct or direct any Work required by this Consent Order or take any response action when conditions at the Site may present an imminent and substantial endangerment to human health, welfare or the environment. If Respondents or their agents become aware, they shall notify the RPM immediately of any conditions at the Site which may present an imminent and substantial endangerment to human health or welfare of the environment. If the RPM halts Work pursuant to this Section, the Respondents may request a modification of the schedule described in the Remedial Design Work Plan and this Consent Order.

D. The absence of the RPM from the Site shall not be cause for stoppage of Work.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Upon request by U.S. EPA, the Respondents shall make the results of all sampling, tests, and other data generated by or on behalf of the Respondents pursuant to implementation of this Consent Order available to U.S. EPA

B. At the request of U.S. EPA, the Respondents shall provide the requester with split or duplicate samples of any samples collected by the Respondents pursuant to the implementation of this Consent Order. The Respondents shall notify U.S. EPA at least ten (10) business days in advance of any sample collection activity the Respondents may undertake. U.S. EPA shall make available to Respondents the results of all sampling tests or other data generated by or on behalf of U.S. EPA in connection with the Site, unless otherwise agreed to by the RPM and PC.

C. Pursuant to applicable Federal laws and regulations, (Section 104(e) of CERCLA and 40 CFR Part 2), the Respondents may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to the terms of this Consent Order. Such an assertion must be adequately substantiated when the assertion is made. Analytical data and other information described in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. Information may be determined to be confidential by the U.S. EPA, and if so determined shall be accorded protection pursuant to applicable federal laws and regulations. If no confidentiality

claim accompanies information when it is submitted to U.S. EPA, or if information claimed as confidential is determined by U.S. EPA not to be confidential, the information may be made available to the public by the recipient.

D. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal or State law. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Order may be withheld based on a claim of privilege.

XV. QUALITY ASSURANCE

A. The Respondents shall prepare preliminary and final RD Quality Assurance Project Plans ("RD QAPP") for submittal to

U.S. EPA according to the schedule in the SOW. The Respondents may participate in a pre-Quality Assurance Project Plan meeting with U.S. EPA prior to submission of the preliminary QAPP to discuss the contents of the QAPP.

B. The QAPP shall be subject to review, modification, and approval by U.S. EPA in accordance with Section VIII (Review of Submissions).

C. The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the Region V Model QAPP. U.S. EPA will provide the Respondents a copy of the Region V Model QAPP to expedite the QAPP development process.

D. The Respondents shall consult with the RPM in planning for, and prior to, all sampling and analysis detailed in the Remedial Design Work Plan. In order to provide quality assurance and maintain quality control with respect to all samples collected pursuant to this Consent Order, the Respondents shall:

1. Require that U.S. EPA personnel and/or authorized representatives are allowed access at reasonable times to any laboratories and are permitted to talk with personnel utilized by the Respondents for analyses;

2. Require that all sampling and analyses are performed according to the U.S. EPA methods or other methods deemed satisfactory by the U.S. EPA and include all protocols to be used for analyses in the Quality Assurance Project Plan; and,

3. Require that any laboratories utilized by the Respondents for analyses participate in a documented U.S. EPA Quality Assurance/Quality Control program equivalent to that followed by the U.S. EPA and consistent with U.S. EPA guidance. As part of such a program, and upon request by the U.S. EPA, such laboratories shall perform analyses of samples provided by the U.S. EPA to demonstrate the quality of analytical data for each such laboratory.

E. The Respondents waive any objections to the validity of technical analyses conducted during the performance of oversight Work required by this Consent Order, provided that such analyses have been verified according to the Quality Assurance/Quality Control procedures contained in the approved QAPP.

XVI. TIMELINESS OF PERFORMANCE

A. The Respondents shall cause all Work required under this Consent Order and Attachments, including Additional Work required pursuant to Section X and any Work required pursuant to modifications to this Consent Order under Section XXVIII, to be performed within the time limits set forth in this Consent Order and Attachments or modifications or in a written approval or determination of Additional Work pursuant to Section X, unless performance is delayed by a force majeure, or if a delay in performance is otherwise allowed in writing by U.S. EPA. For purposes of this Consent Order, a force majeure is an event in whole or part beyond the reasonable control of the Respondents. Neither increases in costs nor Respondents' inability to pay costs, constitutes a force majeure event.

B. The Respondents shall notify U.S. EPA orally no later than two (2) business days and in writing no later than five (5) business days after learning of any event which causes a delay in performance of any Work required by this Consent Order that has an established due date under this Consent Order and/or the SOW, whether or not the Respondents contend that such an event constitutes a force majeure event. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondents to minimize the delay, and the timetable by which these measures will be implemented. If the Respondents contend that a force majeure caused the delay, the Respondents shall set

forth the reasons for such contention in the notification. The inability to obtain, or delays in obtaining any required state, local, or federal permit or authorization shall be reviewed by U.S. EPA on a case-by-case basis to determine whether or not the situation constitutes a force majeure. In any administrative or judicial proceeding concerning this Consent Order, the Respondents shall have the burden of demonstrating that a force majeure caused any delay in performance.

C. If U.S. EPA determines that a delay in performance is attributable to a force majeure, U.S. EPA will, in writing, extend the time period for performance under this Consent Order for a time period not to exceed the delay attributable to the force majeure, unless otherwise agreed by U.S. EPA.

XVII. STIPULATED PENALTIES

A. The Respondents shall be liable for payment into the Hazardous Substances Superfund administered by the U.S. EPA of the sums set forth below as stipulated penalties for each week or part thereof after their respective due dates that the Respondents: fail to submit the Remedial Design Work Plan, pre-design submittals, pre-final/final design submittals, any modified plans and submittals required by U.S. EPA, or any other report or document required to be submitted under the terms of this Consent Order; or fail to comply with a schedule contained in this Consent Order or Attachments or modifications thereto. Such stipulated penalties shall be paid unless U.S. EPA determines that such delay is attributable to a force majeure as

defined in Section XVI (Timeliness of Performance) above, or otherwise determines in its discretion not to impose such penalties. Such sums shall be due and payable within thirty (30) days of receipt of notification from U.S. EPA assessing the penalties. These stipulated penalties shall accrue in the amount of \$1,500 for the first week or part thereof, and \$3,000 for each week thereafter.

B. Stipulated penalties shall begin to accrue on the day after the date that performance is due or the date that a violation occurs and extend through the period of correction. In the case of a violation based on Respondents' failure to submit an approvable revised submission in accordance with Section VIII (Review of Submissions), stipulated penalties shall accrue from the later of: 1) the due date of the revision; or 2) ten days preceding Respondents' receipt of the notice of disapproval.

C. Payment shall be made by certified or cashier's check or money order payable to the Hazardous Substances Superfund and referencing the Site name and state as well as the following identification number: 73. Such payment shall be remitted to:

U.S. Environmental Protection Agency, Region V
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Copies of the transmittal letter and check for each payment to the U.S. EPA shall be provided at the time of such payment to the U.S. EPA RPM and to:

(26)

U.S. Environmental Protection Agency, Region V,
Office of Regional Counsel (CS-3T)
77 West Jackson Boulevard
Chicago, Illinois 60604
attn: SWERB Branch Secretary.

C. A violation of this Consent Order that is the subject of stipulated penalties shall be considered resolved by payment of stipulated penalties as required under this Section.

XVIII. DISPUTE RESOLUTION

A. The Respondents and U.S. EPA shall use their best efforts to resolve all disputes or differences of opinion arising with regard to this Consent Order informally and in good faith. The resolution of any dispute regarding this Consent Order must be in writing and signed by U.S. EPA.

B. If a dispute arises concerning this Consent Order, which the Respondents and U.S. EPA are unable to resolve informally, the parties shall implement the following procedures:

1. If, after twenty (20) days, informal negotiations have not resolved the dispute, the complaining party shall present a written notice of such dispute by certified mail, overnight courier or personal delivery to the other parties. Such notice shall set forth the specific points of dispute, the position of the complaining party and the technical basis therefor, and any actions which the complaining party considers necessary to resolve the dispute;

2. Within ten (10) days of receipt of such a written notice, the other parties shall provide a written response to the complaining party setting forth its position and the basis

therefor. During the five (5) business days following receipt of the response, the parties shall attempt to negotiate, in good faith, a resolution of their differences; and,

3. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain the notice of dispute and the response, including all supporting documentation, submitted to U.S. EPA; and,

4. Following the expiration of the time periods described in Subparagraph 2 above, if U.S. EPA concurs with the position of the Respondents, U.S. EPA shall so notify the Respondents in writing and the parties shall modify this Consent Order pursuant to Section XXVIII to include any necessary extensions of time or variances of Work. If U.S. EPA does not concur with the position of the Respondents, the Associate Division Director of the Waste Management Division, Region V, shall resolve the dispute, based upon and consistent with the terms and objectives of this Consent Order, and shall provide written notification of such resolution to the Respondents.

C. The pendency of dispute resolution set forth in this Section shall not delay the time period for completion of Work and/or obligations to be performed under this Consent Order; except that upon mutual agreement of U.S. EPA and the Respondents any time period may be extended for a time not to exceed the length of the time period taken to resolve the dispute, unless a different time period is allowed agreed to by U.S. EPA.

D. Upon written resolution of any dispute, whether informally or using the procedures in this Section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure and into this Consent Order. The Respondents shall proceed with all remaining Work according to the modified plan or procedure and this Consent Order.

E. In any administrative or judicial proceeding concerning this Consent Order, the Respondents shall have the burden of proving that said position is arbitrary and capricious or inconsistent with this Consent Order.

XIX. COMMUNITY RELATIONS

The Respondents shall cooperate with U.S. EPA in providing non-privileged information to the public. To the extent requested by U.S. EPA, the Respondents shall participate in the preparation of appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA to explain activities at or concerning the Site, including the results of the Remedial Design.

XX. RECORD PRESERVATION

The Respondents shall preserve, during the pendency of this Consent Order, and for a minimum of ten (10) years after termination of this Consent Order, one copy of all records and documents that are required to be prepared pursuant to this Consent Order, despite any document retention policy to the contrary. After this ten year period, the Respondents shall

notify U.S. EPA in writing within sixty (60) days prior to destruction or disposal of any such documents. Upon request of U.S. EPA, the Respondents shall make available to U.S. EPA all or any such records, or copies of all or any such records, subject to Section XIV of this Consent Order (Sampling and Data/Document Availability).

XXI. WAIVER OF CLAIMS

A. The Respondents hereby waive any claims or demands for compensation or payment under Sections 106, 111 and 112 of CERCLA against the United States or the Hazardous Substances Superfund established by Section 9507 of Title 26 of the United States Code for or arising out of any activity performed or expenses incurred pursuant to this Consent Order, except that in the event that the United States is named as a potentially responsible party in this matter, Respondents do not waive any claims they may have against such party.

B. This Consent Order does not constitute, and shall not be construed to constitute, approval or certification of response costs for purposes of Section 111(a)(2) of CERCLA.

XXII. COVENANT NOT TO SUE

In consideration of the actions that will be performed under the terms of this Consent Order, and except as specifically provided in Section XXIII (Reservation of Rights and Contribution Protection) and Section VII (Work to be Performed) the United States covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA

for performance of the Work pursuant to Section VII (Work to be Performed) of this Consent Order. These covenants not to sue shall take effect upon signing of this Consent Order by all parties (Termination and Satisfaction) subject to the receipt by

U.S. EPA of any payments required by Section XVII (Stipulated Penalties). These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Consent Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

XXIII. RESERVATION OF RIGHTS AND CONTRIBUTION PROTECTION

A. U.S. EPA reserves all rights and defenses that it may have pursuant to any available legal authority, except as expressly waived in this Consent Order.

B. Each of the Respondents specifically reserves all rights and defenses that they may have individually or collectively and the right to contest findings of fact and determinations set forth in this Consent Order in any proceeding regarding the Site.

C. Nothing herein shall waive the right of U.S. EPA to take action pursuant to Sections 104, 106(a) and 107 of CERCLA or any other available legal authority. U.S. EPA also reserves the right to take any enforcement action pursuant to CERCLA and/or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages. In addition, U.S. EPA reserves its rights to undertake any Remedial

Design Work, and/or any removal, remedial and/or response actions relating to the Site, and to seek recovery from the Respondents for any and all costs incurred in undertaking such actions if Respondents fail to complete said Work in accordance with the requirements of this Consent Order.

D. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person not a party to this Consent Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous wastes, contaminants, or pollutants at, to, or from the Site. The parties to this Consent Order expressly reserve all rights, claims, demands, and causes of action they may have against any and all persons who are not parties to this Consent Order, and as to each other for matters not covered hereby.

E. U.S. EPA recognizes that the Respondents may have the right to seek contribution, indemnity and/or any other available legal or equitable remedies against any person not a party to this Consent Order that is responsible or liable for any amounts which have been or will be expended by the Respondents in connection with the Site.

F. With regard to claims for contribution against Respondents for matters addressed in this Consent Order, the parties hereto agree that the Respondents are entitled to

protection from contribution actions or claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613 (f)(2), and applicable state law.

G. Nothing herein shall be construed to release the Respondents from any liability for failure of the Respondents to prepare the Remedial Design in accordance with this Consent Order and the Remedial Design Work Plan. Except as provided in Section XXII (Covenant Not to Sue), the parties further expressly recognize that this Consent Order and the successful completion and approval of the Remedial Design do not represent satisfaction, waiver, release, or covenant not to sue, of any claim of the United States against the Respondents relating to the Site, including, but not limited to, claims to require Respondents to undertake further response actions, claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA and claims for damages to natural resources under Section 107 of CERCLA except that, upon receipt of written notice of satisfaction as provided in Section XXIX (Termination and Satisfaction) of this Consent Order, Respondents shall have no further obligations under this Consent Order other than record preservation under Section XX.

H. Nothing contained herein is intended to release or settle any claim for personal injury or property damage by any person not a party to this Consent Order against the Respondents.

I. U.S. EPA reserves its rights to bring an action against Respondents or any other parties pursuant to Section 107 of

CERCLA, 42 U.S.C. § 9607 for recovery of costs incurred in oversight of Respondent's implementation of the Consent Order, or for recovery of any response costs, including, but not limited to, all indirect costs, incurred in connection with Remedial Design activities at the Skinner Landfill Superfund Site, and including all costs, including, but not limited to, all indirect costs, associated with U.S. EPA's performance of the RD or any part thereof in the event that Respondents fail to complete the RD in compliance with the terms of this Consent Order.

XXIV. INDEMNIFICATION OF THE UNITED STATES

A. The Respondents agree to indemnify and save and hold the United States Government and its officers, agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondents, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. This provision, however, shall not extend such obligation of Respondents to indemnify or hold harmless the United States Government and its officers, agencies, departments, agents, and employees for any act or omission of the United States Government or any of its officers, agencies, departments, agents, or employees.

B. The U.S. EPA is not a party to any contract involving the Respondents at the Site.

XXVII. EFFECTIVE DATE OF CONSENT ORDER

This Consent Order shall become effective upon signature by the Associate Division Director, Office of Superfund, U.S. EPA, Region V.

XXVIII. MODIFICATION OF CONSENT ORDER

In addition to the procedures set forth in Sections X (Additional Work), XIII (Project Coordinators), XVI (Timeliness of Performance), and XVIII (Dispute Resolution) of this Consent Order, this Consent Order may be modified by mutual agreement of the U.S. EPA and the Respondents. Any modification of this Consent Order shall be in writing, signed by the U.S. EPA and the Respondents and shall have as the effective date that date on which such amendment is signed by U.S. EPA.

XXIX. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon receipt by the Respondents of written notice from the U.S. EPA that the Respondents have demonstrated that all of the terms of this Consent Order, including any additional Work, modifications or amendments, but excluding record preservation pursuant to Section XX, have been completed in accordance with the terms hereof to the satisfaction of the U.S. EPA.

XXX. NON-ADMISSIONS

Entry into this Consent Decree shall not constitute an admission, adjudication, or waiver of any right or defense of the Respondents with respect to any present or future alleged liability for conditions at or near the Site; or of any fact or

determination arising out of any present or future alleged liability for conditions at or near the Site; or evidence of any wrongdoing or misconduct or liability to any person on the part of the Respondents, its officers, directors, agents, servants, employees, successors, contractors and assigns, and any persons, firms, subsidiaries, divisions and corporations acting under or for it.

XXXI. PRECEDENCE OF CONSENT ORDER

In the event that a conflict arises among the terms and conditions of this Consent Order and those of the Statement of Work, or the Approved Remedial Design Work Plan, this Consent Order shall govern and the terms and conditions hereunder shall determine the parties' rights and responsibilities.

IT IS SO ORDERED AND AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION V

BY: *Jo Lynn Traub*
Jo Lynn Traub
Acting Associate Division Director
Office of Superfund
U.S. Environmental Protection Agency


Date *3/29/94*

Administrative Order on Consent for Remedial Design
Skinner Landfill Superfund Site
U.S. EPA Docket No. _____

(36)

IT IS SO AGREED:

BY RESPONDENT: Ford Motor Company

Name 

Date March 25, 1994

Printed Thomas DeZure
Assistant Secretary

IT IS SO AGREED: *Keith M. Harshman*
BY RESPONDENT: GE Aircraft Engines
Evanston, Ohio Facility
Name Date
Printed Keith M. Harshman
March 25, 1994
Mgt. Environmental, Health, and Safety

(36)

IT IS SO AGREED:

BY RESPONDENT:

NAME *Michael R. Foreman*

Printed Michael R. Foreman
Director, Remedial Projects
Konsanto Company

Date

3/23/94

FW

FROM PPG LAW-PATENT

(MON) 03.28'94 11:32

/ NO. 3061853106 P. 3

(36)

IT IS SO AGREED:

BY RESPONDENT: PPG Industries, Inc.

Name

Date

March 25, 1994

Printed *R. W. LeBoeuf*
R. W. LeBoeuf

Group Vice President
Coatings & Resins

*** END OF DOCUMENT ***

(36)

IT IS SO AGREED:

BY RESPONDENT:

Name

Larry I. Bone

Date

3-23-94

Printed

Larry I. Bone, Ph.D

BW
3/23/94

MAR-28-94 MON 10:48

MEMPHIS ENV CENTER

FAX NO. 19013934719

P.03

(35)

IT IS SO AGREED:

BY RESPONDENT: Velsicol Chemical Corporation

Name CR Hanson

Date 3/21/94

Printed Charles R. Hanson

ATTACHMENT 1
RESPONDENTS

LIST OF RESPONDENTS FOR
REMEDIAL DESIGN
ADMINISTRATIVE ORDER ON CONSENT
SKINNER LANDFILL SUPERFUND SITE

PRP

Dow Chemical Company
Brent W. Schindler
Legal Department
2030 Dow Center
Midland, Michigan 48640

Ford Motor Company
Robin Couch
Office of the General Counsel
Suite 728, Parklane Towers East
One Parklane Boulevard
Dearborn, Michigan 48126

General Electric Aircraft Engines
General Electric Company
William V. Killoran, Jr.
1000 Western Ave.
Lynn, MA 01910

Monsanto Company
ATTN: Stephen Krchma-E2NG
800 N. Lindberg Blvd.
St. Louis, MO 63167

Morton International, Inc.
Jeffrey C. Wyant
Environmental Counsel
100 North Riverside Plaza
Chicago, IL 60606-1596

PPG Industries, Inc.
Michelle Ritter
Law Dept., 39 West
One PPG Place
Pittsburgh, PA 15722

Velsicol Chemical Corporation
A. Enrique Huerta
Resources Coordinator
Memphis Environmental Center
2603 Corporate Ave., Suite 100
Memphis, TN 38132

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Taft, Stettinius &
Hollister
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Cincinnati, OH 45202